

REMARKS

This Application has been carefully reviewed in light of the Final Office Action electronically mailed January 29, 2008 (the “Office Action”). Claims 1-12, 15-16, and 19-44 are pending in the application, Claims 37-44 are withdrawn, and Claims 1-12, 15-16, and 19-36 are rejected. Applicant respectfully requests reconsideration and favorable action in view of the following remarks.

Claim Rejections - 35 USC §103

The Office Action rejects Claims 1-12, 15-16, 19-34 and 36 under 35 U.S.C. §103(a) as being unpatentable over *Kewitz* in view of *Fuchs* and *Anderson*. Applicant respectfully traverses these rejections.

Claim 1 is directed to an underground tank shroud assembly including a shroud. The shroud includes a top region and a base region and is configured to circumferentially enclose a riser of an underground tank. The assembly also includes a shroud lid. The shroud lid is configured to cover the top region of the shroud and is coupled to the shroud at both a first hinge coupling and a second hinge coupling, when the shroud lid is in a closed position.

The Office Action contends that “*Kewitz discloses the invention except for the shroud lid having two hinge couplings.*” *Office Action*, p. 2. It further contends that, “*Fuchs teaches a cover arrangement capable of performing as a shroud with a lid having two hinge couplings.*” *Office Action*, p. 2. In response to Applicant’s previous arguments, the Office Action further contends that “*Kewitz is modified to have two hinge couplings, two Kewitz-type hinge couplings not two Fuchs-type hinge couplings.*” *Office Action*, p. 4. Applicants respectfully maintain that this combination is still improper.

When proposing a combination of references for an obviousness rejection, a reference “must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. M.P.E.P. § 2141.02 (VI). Whenever “the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art.” M.P.E.P. § 2143.01 (II). As discussed below, the teachings of *Kewitz* and *Fuchs* do conflict and would not suggest the Examiner’s proposed combination to one of ordinary skill in the art.

Figure 1 of *Kewitz* appears to show element 13 that secures element 12 to element 11 when element 12 is in a closed position. *Fuchs* discloses a cover device with two “rotation and fixation devices” that allow “the cover [to] be lifted up in a direction perpendicular to the frame,

without being tilted with respect to the frame, and during lifting the fixation/rotation devices become disengaged.” *Fuchs*, ¶ 0014. The pivot elements of *Fuchs* can not be engaged simultaneously, and the engagement can only occur when one end is rotated upward. *See Fuchs*, Claim 4; ¶ 0016; Fig. 3. The pivot elements only interlock when an end is rotated upward, and when *Fuchs* is in a closed position, neither pivot element is interlocked to provide a hinge coupling. *See Fuchs*, ¶ 0025; Fig. 1. Therefore, *Kewitz* discloses a coupling that secures an element in a closed position, while *Fuchs* discloses pivot elements that do not secure an element in a closed position. Modifying *Kewitz* to include the “rotation and fixation devices” of *Fuchs* would change the principle of operation of *Kewitz* and cause *Kewitz* to be unsatisfactory for its intended purpose. Because of this conflict, there is no indication that *Fuchs* would suggest, to a person of ordinary skill in the art, the combination of any elements of *Fuchs* with *Kewitz*.

Finally, the M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, “[t]he tendency to resort to ‘hindsight’ based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” M.P.E.P. § 2142. As discussed above, it certainly would not have been obvious to one of ordinary skill in the art at the time of the invention, based solely on the prior art, *to even attempt* to incorporate the teachings of *Fuchs* into the teachings of *Kewitz*, because *Kewitz* and *Fuchs* teach different and mutually exclusive coupling elements. Therefore, Applicant respectfully contends that the Examiner is using Applicant's own application as a blueprint to combine references of the prior art. For at least the reasons discussed above, the combination of *Kewitz* and *Fuchs* is improper and cannot support an obviousness rejection.

The Office Action further relies on *Anderson* as disclosing a hinge with a nut and bolt connection. *Office Action*, p. 3. While the Office Action tries to contend that *Anderson* would modify the hinge of *Kewitz*, the Office Action specifically states that “[i]t would have been obvious to add the nut and bolt connection [of *Anderson*] to both of Fuchs' rotation/fixation devices to add a more secure lid assembly that can't be removed or lifted as quickly or without the use of hand tools to remove the nuts.” *Office Action* p. 3, 5 (emphasis added). Applicant respectfully disagrees. *Fuchs* explicitly teaches away from the use of a first and a second hinge coupling comprising a nut and bolt connection. Rather, *Fuchs* teaches that

[c]hannel devices are also known in which hinges . . . allow the cover to be pivoted to one side. A substantial disadvantage of this known channel device is that the cover cannot be detached from the frame, and hence cannot be removed. Another disadvantage associated with the use of hinges is that hinges require a great deal of maintenance. In particular, when a channel is being used for drainage of surface water, they will inevitably become dirty and corroded to an extent that their function is impaired, and the hinge region may even become fractured.

Fuchs, ¶ 0007 (emphasis added). Thus, *Fuchs* explicitly teaches that multiple disadvantages result when hinges are used. Accordingly, the quoted paragraph of *Fuchs* would lead away from the proposed modification that would include the alleged nut and bolt hinge connection of *Anderson*, and such modification cannot support an obviousness rejection. M.P.E.P. § 2141.02 (VI). Even if *Anderson* does only modify *Kewitz*, and not *Fuchs*, *Anderson* still only discloses one hinge with a nut and bolt connection. *Anderson*, col. 2, lines 55-58; Fig. 1. Therefore it is unclear what the Examiner proposes to add to the one hinge of *Kewitz* from *Anderson*.

For at least these reasons, Applicant respectfully contends that the combination of *Kewitz*, *Fuchs*, and *Anderson* is improper and does not disclose, teach, or suggest the combination of limitations of Claim 1, and therefore respectfully request that the rejection of Claim 1 be withdrawn.

Claims 2-12, 15-16, and 19-23 each depend, either directly or indirectly, from Claim 1 and incorporate all the limitations thereof. Therefore, Claims 2-12, 15-16, and 19-23 are each patentably distinguishable from the combination of *Kewitz*, *Fuchs*, and *Anderson* for at least reasons analogous to those discussed above with regard to Claim 1.

Claim 24 includes limitations generally directed to a shroud lid configured to cover the top region of the shroud, the shroud lid coupled to the shroud at both a first hinge coupling and a second hinge coupling, when the shroud lid is in a closed position. Accordingly, Applicant contends that Claim 24 is patentably distinguishable from the combination of *Kewitz*, *Fuchs*, and *Anderson* for at least reasons analogous to those discussed above with regard to Claim 1.

Claims 25-34 and 36 each depend, either directly or indirectly, from Claim 24 and incorporate all the limitations thereof. Therefore, Claims 25-34 and 36 are each patentably distinguishable from the combination of *Kewitz*, *Fuchs*, and *Anderson* for at least reasons analogous to those discussed above with regard to Claims 1 and 24.

The Office Action states that Claim 35 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kewitz* in view of *Fuchs* and *Anderson* as applied to claim 24 and further in view of U.S. Patent No. 6,024,243 to Palazzo (“*Palazzo*”). Applicant respectfully traverses this rejection.

Claim 35 depends from Claim 24 and incorporates all the limitations thereof. In rejecting Claim 35, the Office Action relies on the combination of *Kewitz*, *Fuchs*, and *Anderson* as disclosing each of the limitations of Claim 24. As discussed above, the combination of *Kewitz*, *Fuchs*, and *Anderson* is improper and does not disclose, teach, or suggest each of the limitations of Claim 24, and *Palazzo* does not cure this deficiency. Therefore, Applicant submits that Claim 35 is allowable for at least reasons analogous to those discussed above with regard to Claims 1 and 24.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact Luke K. Pedersen at 214.953.6655, the undersigned attorney for Applicant.

Applicant believes no fee is due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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